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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Facilitate
Future Development of SMR Systems
in the 800 MHz Frequency Band

Implementation of Sections 3(n) and 322
of the Communications Act
Regulatory Treatment of Mobile Services

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

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PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

UTC REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),¹ respectfully submits the following reply to the comments filed in response to UTC's petition for reconsideration of the Commission's decision in the *First Report and Order (First R&O)* in the above-captioned proceeding, to reallocate the General Category channels in the 800 MHz band for the exclusive use of commercial mobile radio systems.

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¹ UTC was formerly known as the Utilities Telecommunications Council.

I. The Record Supports Reconsideration of The Decision To Reallocate The General Category Channels

As the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines, UTC filed a petition for reconsideration of the FCC's decision to reallocate the 800 MHz General Category channels from their historic designation as frequencies that were available for licensing by both private and commercial radio systems to being exclusively available to Specialized Mobile Radio (SMR) systems. UTC noted that a reallocation of the General Category channels to the exclusive use of commercial systems will have a devastating impact on the operations of utilities and pipelines, as well as other public safety entities, that rely upon these channels in carrying out their public service obligations. UTC argued that the reallocation of the General Category channels is not supported by the public record, is ill-advised and is contrary to the public interest.

A large number of other parties representing a wide-range of private users filed petitions echoing UTC's call for reconsideration of the FCC's decision to reallocate the General Category channels.² UTC's petition is reinforced by the petitions of these other parties and by the comments of Duke Power and ITA. For example, Entergy states that the Commission's *First R&O* will "seriously compromise" its ability to maintain its 800

² Petitions for Reconsideration of Association of Public-Safety Communications Officials-International (APCO), City of Coral Gables, Consumers Power, Entergy, General Motors (GM) and Industrial Telecommunications Association (ITA).

MHz system and to meet internal and customer service demands.³ Consumers Power describes the FCC's decision as an "insupportable abdication of the Commission's responsibility to provide for the mobile communications requirements of internal use, private mobile radio systems."⁴ Noting the FCC's joint sponsorship with the Department of Commerce of the Public Safety Wireless Advisory Committee, APCO characterizes the Commission's reallocation decision as "ironic at best and hypocritical at worst." ITA indicates that the available data does not support the Commission's conclusion that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. ITA notes that even including all of the licenses held by speculative SMR applicants, a full one-fourth of all of the licenses issued for the General Category channels are for non-SMR systems.⁵

Only one party, Nextel, filed comments opposing UTC's petition for reconsideration. Rather than attempting to refute UTC's argument that FCC has failed to provide a detailed or reasoned basis to justify the FCC's wholesale reallocation of the General Category channels to commercial services, Nextel attempts to confuse the issue by attacking utility entrance into commercial telecommunications.

UTC is a strong advocate of utility entrance into commercial telecommunications services and supports Southern Company's business decision to establish an SMR system.

³ Entergy, p. 2.

⁴ Consumers Power, 8.

⁵ ITA, p. 6.

To the extent that utilities choose to pursue telecommunications offerings, UTC fully expects that they will be required to comply with the same requirements as other similarly situated entities. Contrary to Nextel's allegations, Southern Company did not obtain access to spectrum for free while other SMRs paid for it. None of the current SMR licensees in the 800 MHz band, including Nextel, have as of yet been required to pay for access to spectrum. It is therefore completely misleading to depict Southern Company's use of General Category channels as somehow giving it an unfair advantage over other incumbent SMRs.⁶

More importantly, the FCC must recognize that the vast majority of utilities and other public service/public safety entities that rely on the General Category channels have no commercial aspirations. The petitions of APCO, Coral Gables, Consumers Power, Entergy, GM and ITA make clear, that in many areas of the country public safety agencies, public service utilities and large industrial entities have been forced to rely on access to the 800 MHz General Category channels to implement their essential systems because the dedicated Public Safety and Industrial/Land Transportation (I/LT) channels have become exhausted. Therefore Nextel's suggestion that the current shortage of available private spectrum has been caused by utilities who have licensed the General Category channels for

⁶ Given the fact that under UTC's petition, all legitimate incumbent SMRs in the General Category would be allowed to continue to operate, it is difficult to see what Nextel is concerned about other than competition.

purposes beyond their own private, internal communications needs is as ludicrous as it is offensive.⁷

For all of the above reasons, the FCC should immediately reinstate non-SMR access to the General Category channels. The General Category should be available on a prospective basis for private land mobile radio licensees and any incumbents that are relocated from the upper 200 channels in the 800 MHz band. To the extent purely speculative applications by SMRs have effectively shut-down further licensing in many areas of the country, UTC recommends that the FCC take actions to dismiss those applications.⁸ If such action is taken, the public interest will be served by making the General Category channels available for private licensees and relocated incumbents who truly need access to this spectrum.

II. The Industry Consensus Is Not Representative Of All Users

As a final matter, UTC objects to the characterization by some parties that an “industry consensus” has been reached with regard to the disposition of the General Category channels. The so-called industry consensus developed by the American Mobile Telecommunications Association (AMTA), Nextel and SMRWon, is at best an agreement

⁷ Nextel, p 11. Nextel’s statement is all the more ironic given its infamous record of hoarding spectrum and “boxing-in” legitimate users so that they have no ability to expand their systems.

⁸ Legitimate incumbent SMRs that have business plans and intend to actually construct facilities pursuant to reasonable timetables should be allowed to remain in the General Category.

between the various segments of the SMR industry.⁹ As evidenced by the petitions for reconsideration filed by APCO, ITA and UTC, the agreement does not have the support of the private radio users of the General category channels. In fact, UTC has never even been approached by the plan's proponents to discuss their proposal.

As UTC understands the plan, prior to conducting auctions on the General Category and lower 80 SMR channels the FCC would permit all constructed incumbents, including licensees relocated from the upper 200 channels, to request geographic-based licenses on their existing frequencies on a channel-by-channel basis. The plan calls for co-channel licensees to enter into settlements, joint ventures or other mutually-agreeable means of dividing up EAs. In this way, the plan's architects reason that mutual exclusivity will be avoided and the possibility of auctions would be eliminated.

While the plan has some intriguing aspects to it and is clearly preferable to the auctioning of the General Category channels, the plan also raises some significant concerns for UTC. For example, as a preliminary matter, neither AMTA nor SMR Won have provided a compelling case as to why the existing site-specific licensing rules should be altered. Instead, they have contrived their plan as a means of meeting the Commission's desire to have EA licensing, but in a manner that avoids the use of auctions. However, it makes little sense to go through such convoluted exercises if the end-goal of EA licensing

⁹ Petitions for reconsideration filed by a number of small SMRs cast some doubt on how representative the consensus is even among the SMR community.

in the General Category does not serve the public interest. Site-specific licensing serves the public interest by allowing non-commercial licensees such as utilities, pipelines and public safety agencies to obtain licensing on the basis of their specific service territory requirements. It is also spectrally efficient because it allows licensees to obtain the precise amount of spectrum that they require: no more and no less.

From UTC's perspective the plan also raises questions as to who would be eligible for EA licensing. For example, would it allow unconstructed incumbent licensees to seek geographic licensing agreements? Many utilities, pipelines, and other private radio licensees are in the process of building their systems pursuant to multiple year construction schedules. Provided that incumbent licensees are in compliance with their authorized construction schedules they should be entitled to participate in any geographic licensing settlements. Further, as a practical matter the plan's implementation would have to be delayed for up three years since it includes the relocation of incumbents from the upper portion of the 800 MHz band (an aspect of the plan that would appear to be necessary). However, many of UTC's members cannot wait three years for access to the General Category channels.

Finally, if the plan were adopted it would have to make clear that an incumbent choosing not to participate in a joint venture EA would be able to have a license partitioned from the EA license and that would be "grandfathered" on a primary basis indefinitely.

Until the satisfactory resolution of these questions, and the inclusion of the views of the private land community, it should be made clear that the AMTA, Nextel, SMRWon plan does not at this time represent an “industry consensus.”

III. Conclusion


The FCC’s decision to reallocate the General Category channels is not supported by the public record, and is contrary to the public interest. The *First R&O* does not provide a detailed or reasoned basis to justify the FCC’s the wholesale reallocation of the General Category channels to commercial services. The FCC should immediately reinstate non-SMR access to the General Category channels.

WHEREFORE, THE PREMISES CONSIDERED. UTC requests the Federal Communications Commission to take action in accordance with the views expressed above.

Respectfully submitted,

UTC

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